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Department Of Justice
Microsoft Case
Tunney Act comment
January 28, 2002

At the request of the DOJ, this Tunney Act comment is being submitted by email.

The Revised Proposed Final Judgment in U.S. vs. Microsoft is not in the public's best interest, because Microsoft's monopoly will remain intact.

Some concerns are:

1. The court has determined that Microsoft maintained its monopoly illegally, partly by overcharging consumers, worldwide. The United States taxpayers should not shoulder the burden for the expenses that Microsoft will incur to mitigate the illegal activity. Microsoft management and/or shareholders should pay the expenses, after taxes have been calculated. Will Microsoft be permitted to use the expenses incurred as a result of this settlement, to reduce taxable income?
2. Microsoft's illegal activities extend to most of its products, however, the Revised Proposed Final Judgment generally only addresses a type of product referred to as "middleware". Will there be further litigation that addresses the Operating System and other products?
3. The proposed resolutions may provide some relief for ten or twenty large companies, under licensing agreements, but Microsoft remains in control. How will small companies and not-for-profit organizations compete?
4. Most, if not all of Microsoft's "inventions", have come from competitors, or academic institutions funded, in part by the very consumers that Microsoft has exploited. Does the Revised Proposed Final Judgment change what was illegal and unethical in the past, into legal and accepted activities?
5. The damage done to consumers by this monopoly goes well beyond monetary damages. The restrictive way in which Microsoft constructs its products, makes it very difficult and expensive to use the full potential of a computer. The lost opportunities to gain new knowledge and abilities, are enormous to children and adults, especially to those that are monetarily disadvantaged. Will the Revised Proposed

Final Judgment be a tool for widening the information divide?

6. Microsoft's model encourages monopoly by default. To share ideas with someone that uses Microsoft products it is easier and sometimes necessary to use Microsoft products. This isn't a technical requirement, it is deliberately enforced by Microsoft's business practices. If the Revised Proposed Final Judgment is adopted, will people still be obliged to purchase Microsoft products to communicate with people that only have Microsoft products?

7. Competition is an essential component of the United States economy. Without competition there is no way to set a fair value for products and services. By allowing Microsoft to continue controlling the computer software industry, it will not be possible to determine a fair value for the products and services that the software industry produces. If the Revised Proposed Final Judgment is accepted, what will stop Microsoft from pursuing its monopoly?

8. It seems unnatural for one company to control the tools of communication. Microsoft didn't invent; the computer, software, email, or the Internet. Yet, Microsoft has control, or, is pursuing control of all those and other communication tools. This control, which has been obtain by illegal activities, would not be palatable even if it had been obtained legally. If the Revised Proposed Final Judgment is approved will Microsoft still be permitted to control communication?

9. The Free Software (free as in free speech) and Open Source communities have a healthy amount of competition in each type of product that they produce. These communities are populated by talented professionals and, also, by those that are learning. If the environment that Microsoft participates in is healthy why is there no competition?

10. The founder of Microsoft, William Gates, has publicly referred to Free/Open Source software as a cancer. Some of the groups and individuals in Free Software/Open Source communities, feel that it is more important to help disadvantaged people, than to be paid for their time and expertise. Will Microsoft be allowed to destroy these communities?

Those are just a few of many concerns raised by the Revised Proposed Final Judgment in, U.S. vs. Microsoft This settlement was arrived at during a time of unprecedented grief and tragedy for the United States and World, following the events of September 11, 2001. Further pressure was put on those in the Judicial branch by President Bush, when he asked that this case be settled quickly. The terrorists should not be allowed to affect the good judgement of those that

uphold the law.

The following is an example of misinformation that is present in this case:

Quoting from the Competitive Impact Statement, under, B. Factual Background, 1. Microsoft's Operating System Monopoly

"Microsoft has monopoly power in the market for Intel-compatible personal computer operating systems and undertook an extensive campaign of exclusionary acts to maintain its operating system monopoly. The relevant market for evaluating Microsoft's monopoly power is the licensing of all Intel-compatible personal computer operating systems worldwide. Intel-compatible personal computers are designed to function with Intel's 80x86 and successor families of microprocessors (or compatible microprocessors). Operating systems designed for Intel-compatible personal computers do not run on other personal computers, and operating systems designed for other personal computers do not run on Intel-compatible personal computers. Moreover, consumers are very reluctant to substitute away from Intel-compatible personal computers (for any reason, including an increase in operating system prices) because to do so would entail incurring substantial costs and would not result in a satisfactory substitute. Thus, a monopolist of operating systems for Intel-compatible personal computers can set and maintain the price of a license substantially above that which would be charged in a competitive market without losing so many customers as to make the action unprofitable. "

This statement comes to a correct conclusion, but the facts are wrong. Operating systems can and are built to run on a variety of microprocessors. Debian GNU/Linux supports several microprocessors. Microsoft makes huge profits, but has ignored the other microprocessor manufacturers, probably because the profit margins wouldn't be as high. This practice may be good for Intel, but isn't good for Intel's competitors, and it isn't good for consumers. The reason everyone uses Microsoft products, is that Microsoft products will not communicate with other software. Microsoft and Intel don't have technically superior products, they are locked in a monopoly, that is driven by Microsoft's unwillingness to communicate.

The standards for formatting documents, spreadsheets, etc., need to be in the public domain. We need to be able to communicate freely. The free market system needs to be dominated by healthy competition, not by monopolies.

The states that did not agree to the Proposed Final Judgment, have written a proposal that could break the monopoly that Microsoft holds. It is not the only possible solution. Any workable solution must remove control of the standards from Microsoft.

The Revised Proposed Final Judgment; is not in the publics best interest, will not remove the monopolist powers from Microsoft, will not provide justice for those that have been and are being harmed.

I ask that Judge Colleen Kollar-Kotelly not accept the Revised Proposed Final Judgment.

Thank you for your consideration.

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computer user